IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9260 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY @ VINOD SOMABHAI PATNI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 24th August, 1999, made against him by the Commissioner of Police, Ahmedabad City, under the

powers conferred upon him under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It appears that two offences punishable under Chapters XVI and XVII of the IPC have been registered against the petitioner on 16th July, 1998 and 2nd August, 1999. At the relevant time, the first of the offences was pending trial and the latter was pending investigation. In view of the said offences registered against the petitioner, the petitioner has been held to be a 'dangerous person' within the meaning of section 2 (c) of the Act. Some two persons have given statements with respect to the anti-social activities of the petitioner which are prejudicial to the public order. Both the witnesses have stated that the petitioner is a head-strong person and on the dates of respective incidents had issued threats to the public causing breach of the public tranquility and the even tempo of life. It is, therefore, held that the activities of the petitioner are prejudicial to the maintenance of public order.

Amongst other grounds, it is contended that in both the offences registered against the petitioner, the petitioner was arrested and was also ordered to be released on bail. Without resorting to the preventive detention, the petitioner could have been effectively prevented from repeating his alleged anti-social activities by moving the competent court for cancellation of bail. However, the Detaining Authority has failed to apply its mind to all the available effective remedy. The order of detention is, therefore, vitiated for non-application of mind.

The Division Bench of this court in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS STATE OF GUJARAT & ORS (1995 {2} GLR, 1134) has held that the Detaining Authority can effectively resort to the less drastic remedy of getting the order of release on bail cancelled under section 437 (5) CRPC. The order of detention made without considering the possibility of resorting to the remedy available under section 437 (5) CRPC would be vitiated for non-application of mind. The said view has been reiterated by another Division Bench (Coram : C.K.Thakkar Act.CJ & A.L.Dave J) in the matter of YUNUSBHAI HASANBHAI GHANCHI VS DISTRICT MAGISTRATE (LPA No. 1056/99 IN SCA NO. 8650/98, DECIDED ON 15TH SEPTEMBER 1999). It is not disputed that in the present case, the Detaining Authority has not taken into consideration the possibility of cancellation of bail under section 437 (5) CRPC. In view of the above

referred Division Bench judgments, the impugned order is required to be held to have been made without proper application of mind. The order is, therefore vitiated.

Petition is allowed. The impugned order dated 24th August, 1999 is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. There shall be no order as to costs.

.....

JOSHI